

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, DAYTON, OHIO

SHIRLEY SHEFFER, et al. :
Plaintiff, : Case No. 3:12-cv-238-WHR
v. : Judge Rice
NOVARTIS PHARMACEUTICALS CORP. :
Defendant. :

MOTION TO QUASH OR MODIFY SUBPOENA

Now comes Victor Y. Kim, DDS, and moves the Court to quash or modify a subpoena served upon him to testify in the trial of this case on a currently unidentified date and time. The subpoena as issued will cause substantial undue burden to Dr. Kim and his patients. This Motion is supported by the attached Memorandum.

MEMORANDUM

Movant, Dr. Kim, is an oral surgeon with a busy practice in Troy, Ohio. Dr. Kim is also a treatment provider of Plaintiff, Shirley Sheffer.

On June 10, 2014, Dr. Kim was subpoenaed to testify in the trial of this case June 24, 2014. At that time the trial was scheduled to begin June 23, 2014. June 24 is a Tuesday, a day when Movant has a full day of patients scheduled. Undersigned counsel accordingly telephoned local counsel for Plaintiff and Defendant and asked that Dr.

Kim's trial testimony be perpetuated by videotape at a mutually agreeable time. Neither side agreed to that proposal.

The trial was then continued to July 15, 2014. Dr. Kim has been informed that he will be required to testify July 16, 17 or 18. Dr. Kim has a full schedule of patients July 17 and 18. July 16, a Wednesday is the day when Dr. Kim typically does not see patients. Although Dr. Kim uses Wednesdays for other business-related tasks, he could be available to testify in the afternoon of July 16.

Civ. R. 45(c)(3) requires a court to quash or modify a subpoena when the subpoena subjects a person to undue burden. In this situation, the subpoena subjects Dr. Kim and all the patients he has scheduled July 17 and 18 to undue burden.

Dr. Kim asks this Court to order the parties to perpetuate his testimony prior to trial to prevent disruption to his practice. Trial perpetuation depositions are indeed the norm between the legal and medical communities for non-retained professional witnesses for exactly this reason – the disruption to the important needs of dozens of people. With the continuance, the parties now have time to coordinate the trial deposition. Alternatively, Dr. Kim asks the Court to require that Dr. Kim be called to testify only in the afternoon of July 16, 2014.

Respectfully submitted,

/s/ Konrad Kircher
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served via the Court's electronic filing system upon all counsel of record this 23rd day of June, 2014.

/s/ Konrad Kircher

Konrad Kircher (0059249)